

# **Utah Lake Comprehensive Management Plan**

## **Introduction Document on Sovereign Land Management**

### Introduction

The bed of Utah Lake became state (sovereign) land on the date of Utah's statehood, January 4, 1896. The Division of Forestry, Fire and State Lands manages the sovereign land in accordance with the Public Trust Doctrine, state law and administrative rule. The purpose of this document is to summarize the management framework for the bed of Utah Lake.

### The Origin of Sovereign Lands

Under English common law, the Crown held title to all lands underlying navigable waterways, subject to the Public Trust Doctrine. Following the American Revolution, title to such lands in the U.S. vested in the 13 original colonies. Under the Equal Footing Doctrine, fee title to those lands also vested in each state subsequently admitted to the Union, upon admission. Utah's public trust lands, known as "sovereign lands," lie below the ordinary high water mark of navigable bodies of water. Utah's sovereign land includes Utah Lake, Great Salt Lake, Bear Lake (Utah's half), Jordan River and portions of the Green, Colorado and Bear rivers.

### Constitution, Statute and Rule

The framework for sovereign land management is found in the Utah Constitution (Article XX), state statute (primarily Chapter 65A-10), and administrative rule (R652). Article XX of the Utah Constitution accepts sovereign lands to be held in trust for the people and managed for the purposes for which the lands were acquired. Section 65A-2-1 of the Utah Code provides: "The division [of Forestry, Fire and State Lands, FFSL] shall administer state lands under comprehensive land management programs using multiple-use, sustained-yield principles." Briefly stated, the overarching management objectives of FFSL are to protect and sustain the trust resources of, and to provide for reasonable beneficial uses of those resources, consistent with their long-term protection and conservation. This means that FFSL will manage Utah Lake's sovereign land resources under multiple-use sustained yield principles, implementing legislative policies and accommodating public and private uses to the extent that those policies and uses do not compromise public trust obligations (Section 65A-10-1) and sustainability is maintained. Any beneficial use of public trust resources is subsidiary to long-term conservation of resources. Administrative rules address planning (R652-90) and land use authorizations including minerals (R652-20), special use lease agreements (R652-30), easements (R652-40), rights of entry (R652-41), grazing (R652-50), cultural resources (R652-60), exchanges (R652-80) and off-highway vehicles (R652-110).

Although sovereign land planning and management responsibilities lie with FFSL, other divisions of the Department of Natural Resources (DNR) also have management responsibilities for resources on and around Utah Lake. The Division of Wildlife Resources, for example, has plenary authority for managing wildlife in, on and around the lake. The Division of Parks and Recreation manages Utah Lake State Park and coordinates search and rescue and boating enforcement on the lake. The Division of Water Rights regulates the diversion and use of lake and tributary waters. The Division of Water Resources conducts studies, investigations and

plans for water use. DNR divisions also regulate mineral extraction activities, conduct hydrologic research and identify and map geologic hazards around the lake.

### The Public Trust over Sovereign Lands

Under A.D. 6th Century Roman law, and perhaps earlier, the air, sea and running waters were common to all citizens and the separate property of none. All rivers and ports were public and the right of fishing was common to all. Any person was at liberty to use the seashore to the highest tide, to build a retreat on it, or to dry nets on it, so long as they did not interfere with the use of the sea or beach by others. Although the banks of a river could be privately owned, all persons had the right to bring vessels to the banks, to fasten them by ropes and to place any of their cargo there. The influence of Roman civil law carries forward through English common law to today's Public Trust Doctrine, which recognizes the special public interest in rivers, lakes, tidelands and waters.

The Public Trust Doctrine "is founded upon the necessity of preserving to the public the use of navigable waters free from private interruption and encroachment" (Illinois Central R.R. Co. V. Illinois, 1892). Sovereign lands are held in trust by the state for the benefit of the public. The "trust" is a real trust in the legal sense of the word. There is a clear and definite trust corpus (the lands, waters and living resources therein), clear beneficiaries (the public), elected and appointed state officials with fiduciary responsibilities in managing the trust corpus and a clear purpose for the trust. The Public Trust Doctrine establishes the right of the public to use and enjoy these trust waters, lands and resources for a wide variety of recognized public uses. The original purpose of the doctrine was to assure public access to navigable waters for commerce, navigation and fishing. Protection of these resources remains paramount. The Public Trust Doctrine has evolved, in some states, to include modern uses such as recreation, environmental protection and preservation of scenic beauty. Implementation of multiple-use and other legislative policies for sovereign land is subject to consistency with public trust obligations. The Public Trust Doctrine has been, and will continue to be, flexible to accommodate changing demands for public trust resources.

There is no hierarchy of uses protected under the doctrine, but when there are competing public benefits, the public trust requires that those benefits that best preserve the purpose of the public trust under the circumstances should be given a higher priority. The Utah Legislature has assigned responsibility for management of sovereign lands, including Utah Lake, to FFSL. As trustee, FFSL must strive for an appropriate balance among compatible and competing uses while ensuring that uses protected under the Public Trust Doctrine, commerce, navigation and fishing, have primacy. It is desirable to maintain the option to adjust the allocation of public trust resources in response to changes in demand and changes in administrative and legislative policy. There are circumstances under which a lessee or grantee must be able to restrict public access to fully enjoy the rights granted under a lease, permit or sale. Examples include restrictions during mining operations, construction of improvements, harbor operations, military operations and access to personal property. The test of any disposition of an interest in sovereign land is that it must be done without affecting the public interest in what remains. This involves a judgment call on the degree of affect on the trust resources.

Sale of sovereign lands is generally precluded by the constitutionally-imposed duty of the state to manage sovereign lands for the public. The general exception to this prohibition is if the

disposition itself is in the furtherance of the public interest. Prior to 1988, state law limited the sale of sovereign lands to purposes that “promote a material public or quasi-public use or service, and then only in such quantity as may be reasonably necessary to promote such public or quasi public use or service; and provided further, that such use shall not unreasonably interfere with navigation” (Section 65-1-14). In 1988, state law was changed to allow the sale of sovereign land “only in the quantities and for purposes as serve the public trust and do not interfere with the public trust” [Subsection 65A-10-1(1)]. This change reinforced application of the Public Trust Doctrine and further restricted the purposes for which sovereign land may be sold. The legislature has chosen to protect the public interest when sovereign land is sold or leased by requiring that “...the lease, contract of sale, or deed shall contain a provision that: (a) the lands shall be open to the public for the purpose of hunting, trapping, or fishing during the lawful season, except as provided by Section 65A-2-5; and (b) no charge may be made by the lessee, contractee, or grantee to any person who desires to go upon the land for the purpose of hunting, trapping, or fishing” (Section 23-21-4). Section 65A-2-5 reads: “The director of the Division of Forestry, Fire, and State Lands, in conjunction with the Wildlife Board, may restrict or limit public use of leased parcels of sovereign lands for hunting, trapping, or fishing: A. upon the petition of the affected lessee; B. after a public hearing; and C. upon a determination that unrestricted public use for hunting, trapping, or fishing substantially interferes with the primary activities authorized by the lease.”

### The Utah Lake Boundary

In 1987, the United States Supreme Court reaffirmed the state’s ownership of the bed of Utah Lake, but the decision failed to establish the location of that boundary except as the “ordinary high water mark” of the lake at the time of statehood. For the ocean and most rivers and lakes, the ordinary high water mark is relatively constant, and can be identified reliably from year to year. Due to the gradual slope of Utah Lake’s shore, the fluctuating level of the lake and historical uses, the elevation of this “ordinary high water mark” is difficult to determine with certainty.

Section 65A-10-3 authorizes the Division of Forestry, Fire and State Lands to enter into agreements with owners of land adjacent to the lake to establish the sovereign land boundary. The division has been negotiating with willing landowners since 1994 to establish the boundary. There were approximately 225 landowners around the lake when the negotiations began. To date, the sovereign land boundary has been settled with 165 landowners covering approximately 80 percent of the shoreline. The division appreciates the cooperation of landowners willing to negotiate the boundary. The remaining shoreline is under litigation with upland owners. The division remains willing to negotiate during the litigation.

### The Planning Unit

Lands subject to the Comprehensive Management Plan (CMP) are limited to sovereign lands where the upland boundary has been established (Map A). Disputed lands are not included. The Court has prohibited actions that would permanently affect disputed lands. When the ownership boundary is determined, lands that are sovereign land most likely will be classified and managed the same as surrounding sovereign land. Lands that are private will be under the control of landowners.

On March 24, 2004, sovereign lands were withdrawn from leasing and permitting for 18 months or the date of completion of the CMP, whichever occurs first. The withdrawal does not apply to uses associated with boundary settlements, improvement of access and trails, or activities associated with the protection of endangered species. The intent of the withdrawal is to ensure that development and use of the lake occur within the context of the CMP.

### Sovereign Land Classifications

Division rule (Section R652-70-200) allows for classification of sovereign land based upon current and planned uses:

Class 1 - Manage to protect existing resource development uses.

Class 2 - Manage to protect potential resource development options.

Class 3 - Manage as open for consideration of any use.

Class 4 - Manage for resource inventory and analysis (a temporary classification).

Class 5 - Manage to protect potential resource preservation options.

Class 6 – Manage to protect existing resource preservation uses.

To date, none of these classifications have been applied to Utah Lake.

### Existing Leases and Permits

Existing leases and permits include six easements, five special use lease agreements, five general permits, one right of entry and one grazing permit (Appendix A and Map C).

### Public Access to Utah Lake

At the onset of boundary negotiations with upland owners, public access to the lake was available at 12 locations. During boundary negotiations the division pursued opportunities to increase the number of public access points. To date, boundary negotiations have led to 19 additional access points (Appendix B and Map B). The Division appreciates the cooperation of landowners who were willing to include public access in the boundary negotiation process.

### Management of Utah Lake and the June Sucker

On April 30, 1986, the June sucker, a native endemic fish, was federally listed as an endangered species in Utah Lake. The fish, which once existed in the millions, was probably down to fewer than 1,000 individuals. The listing of the fish and designation of “critical habitat” in the lower 5 miles of the Provo River has had an on going impact on the lake’s management and the future of all users who might someday have an impact on the species—this was especially true of water users.

Most water development in Utah requires federal funding, permitting, licensing, or some other federal approval. Water development by its very nature removed or changed the timing of flow into Utah Lake both of which potentially impacted the endangered June sucker. Continuing confrontations between water user groups and federal and state biologists were not productive for either the users or the fish. Therefore, in the late 90’s a group of biologists and water users began a cooperative effort to insure added interest in the recovery of June sucker and resolution of water resource operation and development issues. Finally, on April 17, 2002, eight federal,

state, local agency and private groups formalized the June Sucker Recovery Implementation Program (JSRIP).

The JSRIP is not only charged with recovering June sucker but is also committed to ensuring that water use and development for human needs occurs concurrently. The program is currently implementing a number of “recovery elements” that will impact Utah Lake and its uses. First, the program is focusing on restoration of the habitat of Utah Lake, both land and water, which will, hopefully, improve the lake’s ecosystem. As water quality and quantity improve, so will the ability of the lake to sustain and enhance fishing and recreational opportunities. Second, removal of non-native species will likely change fishing opportunities over the years as carp (now 90 percent of the fish biomass) are removed or excluded from specific areas and other beneficial fish become more predominant. Third, on-going research is providing useful facts, not only about June sucker, but about other fish movements, fishing use and possible areas where restoration of tributary flows will enhance public uses.

One unanticipated outcome of the JSRIP is the changing view local residents are taking with regard to Utah Lake’s values and importance. A book on Utah Lake’s legacy and a subsequent documentary showing the lake’s users, both historic and contemporary, has provided a number of residents with a positive view about Utah Lake and what the future could be. These important steps in getting public involvement in the lake’s care and protection will also be important in understanding the public’s role and interest in protecting and enhancing the values of the lake for future development and use.

Additional efforts of the program will focus on working with local and regional government with their ongoing need to comply with the Endangered Species Act. With the U.S. Fish and Wildlife Service as a program partner other lake issues including marinas, bridges, roads and such become a part of an overall discussion of how to protect and enhance the June sucker’s environment while balancing the need for continuing growth of the county and municipalities. The June sucker program, while not the focal point of lake restoration and development issues, is a balanced program, which recognizes competing needs of use and protection and tries to maintain good working relationships between the parties.

## Appendix A – Existing Leases and Permits

### Easements and Rights of Way

<u>Number</u>	<u>Lessee/Permittee</u>	<u>Purpose</u>
ROW 62	Provo City Corp.	road
ROW 1639	Utah Power & Light	distribution line
ESMT 140	Farm Management Company	intake canal
SOV-0001-400	Geneva Steel LLC	diffuser pipeline
40000064	Saratoga Springs Development	pool drain
40000014	Dyno Nobel Inc.	road

### Special Use Lease Agreements

<u>Number</u>	<u>Lessee/Permittee</u>	<u>Purpose</u>
SULA 852	Timp Marina Club	harbor
SULA 897	Geneva Steel LLC	retention pond
30000001	Mark Cook	harbor
30000012	El Nautica Boat Club	harbor
30000037	Jeff Stubbs	agriculture

### General Permits

<u>Number</u>	<u>Lessee/Permittee</u>	<u>Purpose</u>
SLGP 0013	Utah County Public Works	harbor
70000001	Division of Wildlife Resources	road
70000005	Division of Parks and Recreation	state park
72000013	Provo City Corp.	airport
72000024	American Fork City	harbor

### Right of Entry

<u>Number</u>	<u>Lessee/Permittee</u>	<u>Purpose</u>
41000092	Utah Water Ski Club	dock and water ski course

### Grazing Permits

<u>Number</u>	<u>Lessee/Permittee</u>
GP 22874	Lawrence Lavery

## Appendix B – Utah Lake Access Points

### Before Boundary Negotiations

American Fork Boat Harbor

Powell Slough Sportsman Access\*

Utah Lake State Park

Skipper Bay Trail\*

Mill Run Sportsman Access\*

Swedes Lane DWR Access\*

Sandy Beach\*

4000 West Sportsman Access\*

LeBaron Point Sportsman Access\*

Mile Marker 19 Access\*

South Ireco Access

Lincoln Point County Marina

### Added During Boundary Negotiations

Subdivision Access Point

Vineyard Road Access Corridor

Southwest Airport Access

500 West Sportsman Access

Lincoln Point Sportsman Access

South Shore Farms Access

Mulberry Access

Goose Point North Access

Goose Point South Access

Weed Access Point

Lavery Access Point

Turf Farm Access Point (mile marker 13)

Pelican Bay Marina (new Saratoga marina)

Eagle Park Access Point

Saratoga Public Trail

Inlet Park Island Access

Lindon Marina

Swedes Lane North

North Camelot (undeveloped)

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\* These access points existed before boundary settlements but were formalized by the settlements